

**Polk
County**

**LAW ENFORCEMENT
USE OF
DEADLY PHYSICAL
FORCE RESPONSE
PLAN**

Polk County
Use of Deadly Physical Force
Planning Authority

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Members of the Planning Authority

John Fisher, Polk County District Attorney (co-chair)
Bob Wolfe, Polk County Sheriff (co-chair)
Lt. Mike Peterson, Oregon State Police
Chief Jerry Moore, Salem Police Department
Officer Jeff Huey, Labor Union Representative
Nancy Adams, Public Member

On April 22, 2008, this Plan was approved by a majority vote of the Planning Authority, and submitted for approval to governing bodies of the following jurisdictions:

Polk County-----	Approved 05-28-2008
City of Independence-----	Approved 05-27-2008
City of Monmouth-----	Approved 06-03-2008
City of Dallas-----	Approved 05-19-2008
City of Falls City-----	Approved 06-02-2008
City of Salem-----	Approved 05-05-2008

Upon receiving a vote of approval from 2/3 of the above jurisdictions, this Plan was submitted to the Attorney General, who approved the Plan on July 15, 2008.

Preamble

Polk County Law Enforcement recognizes the importance to both their agencies and our communities to ensure any use of deadly force is investigated in a professional, competent and impartial manner. The openness with which we proceed in these investigations is critical to establishing and maintaining trust within the community. It is clear our citizens examine closely the actions any law enforcement agency takes when their officers utilize deadly physical force, and it is our goal to ensure the community is confident and accepting of the actions Polk County Law Enforcement agencies take when involved in these situations.

Section 1: Administration

- (1) In the event that a member of the planning authority is unable to continue to serve, a replacement shall be appointed as provided in Section 2(1) of Senate Bill 111, Oregon Laws 2007.
- (2) There shall be six voting members of the Planning Authority. The approval of the Plan, elements or revisions thereof, shall be by majority vote.
- (3) The presence of 2/3 of the voting members shall be required in order to hold any vote.
- (4) Any meeting of a quorum of the voting members of the Planning Authority is subject to Oregon's open meeting law.

Section 2: Applicability of the Plan

- (1) This plan shall be applicable, as set forth herein, to any use of deadly physical force by a police officer acting in the course of and in furtherance of his/her official duties, occurring within Polk County.

Section 3: Definitions

Agency – Means the law enforcement organization employing the officer who used deadly physical force.

Plan - Means the final document approved by the Planning Authority, adopted by two-thirds of the governing bodies employing law enforcement agencies,

and approved by the Attorney General. Any approved revisions shall become a part of the Plan.

Deadly – Physical Force	Means physical force that under the circumstances in which it is used is readily capable of causing death or serious physical injury.
Serious-Physical Injury	Has the same meaning as “serious physical injury” as defined in ORS 161.015(8).
Physical-Injury	Means impairment of physical condition or substantial pain that does not amount to “serious physical injury.”
Involved-Officer	Means the person whose official conduct, or official order, was the cause in fact of the death of a person. “Involved Officer” also means an officer whose conduct was not the cause in fact of the death, but who was involved in the incident before or during the use of deadly physical force, and this involvement was reasonably likely to expose the officer to a heightened level of stress or trauma.

Section 4: Immediate Aftermath

- (1) When an officer uses deadly physical force, the officer shall immediately take whatever steps are reasonable and necessary to protect the safety of the officer and any member of the public.
 - (a) After taking such steps, the officer shall immediately notify his or her agency of the use of deadly physical force.
 - (b) Thereafter, the officer, if able, shall take such steps as are reasonably necessary to preserve the integrity of the scene and to preserve evidence.
 - (c) Upon request, the officer shall provide information regarding the circumstances as necessary to protect persons and property, preserve any evidence, and to provide a framework for the investigation.
- (2) If the use of deadly physical force results in physical injury, the Agency may employ its own resources to investigate and document the incident.
 - (a) This section does not prohibit the Agency from requesting assistance from an outside law enforcement agency.

Section 5: Serious Physical Injury/Death

When the use of deadly physical force results in death or serious physical injury to any person, in addition to the requirements of Section 4 (1) of this Plan, and not withstanding agency policy, the following provisions apply:

- (1) Upon the arrival of additional officers, sufficient to manage the scene, each Involved Officer shall be relieved of the above duties set forth in Section 4 (1) of the Plan, and the duties shall be re-assigned to uninvolved police personnel.
- (2) The on-scene supervisor, or officer in charge, shall take immediate action to stabilize the situation, ensure notification of the appropriate staff and agencies, and shall obtain information relevant to public safety (e.g. outstanding suspects, location of evidence, direction of travel, etc.)
- (3) As soon as practicable, each Involved Officer shall leave the scene, accompanied by a companion officer chosen by the Involved Officer and be offered an opportunity for a medical examination. If the officer is not in need of medical treatment, the officer shall be taken to a location designated by the investigative agency. Following the use of deadly physical force, the officer's union representative shall be notified.
- (4) As soon as practicable, the duty weapon of any officer who fired his/her weapon shall be seized by investigators, and replaced with a substitute weapon, if appropriate. Other involved officers' weapons are subject to seizure by the investigative agency.
- (5) After consultation with the involved officer(s), the Agency or officer shall notify the officer's family according to the Agency's policy regarding such notification.
- (6) As soon as practicable after the arrival of a supervisor, notification shall be made to the District Attorney as provided in Section 8(1) of this Plan.
- (7) Interview of an "Involved Peace Officer":

As used in this section "interview" refers to formal interview of the officer by assigned investigative personnel that occurs a reasonable time after the incident, and after the officer has had an opportunity to consult with counsel, if so desired.

- (a) The interview of the involved officer(s) who discharged a firearm during a use of deadly physical force incident resulting in death or serious physical injury, shall occur after a reasonable period of time to prepare for the interview and taking into account the emotional and physical state of the officer(s). The interview shall occur no sooner than 48 hours after the incident, unless this waiting period is waived by the officer.

- (b) The waiting period does not preclude an initial on-scene conversation with the officer to assess and make an initial evaluation of the incident.
 - (c) The on-scene supervisor shall take immediate action to stabilize the situation, ensure notification of the appropriate staff and agencies, and shall obtain a preliminary statement from the involved officer as soon as possible. The purpose in obtaining this statement will be to obtain public safety information (e.g. outstanding suspects, location of evidence, direction of travel, etc.).
 - (d) The scene shall be secured and managed consistent with the control of any other major crime scene. Only personnel necessary to conduct the investigation shall be permitted access to the scene. When it is determined that no evidence will be contaminated or destroyed, the officer (s) involved may conduct a “walk through” to assist in the investigation.
- (8) For at least 72 hours immediately following an incident in which the use of deadly physical force by a police officer resulted in the death of a person, a law enforcement agency may not return an Involved Officer to duties that might place the officer in a situation in which the officer has to use deadly force.
- (a) Officer (s) involved in discharging his or her firearm that results in death or serious physical injury shall immediately be placed on administrative leave until such time as sufficient information exists to determine the justification in the use of deadly physical force and that the officer (s) have had an opportunity for mental health counseling with an outcome that no issues would preclude the officer (s) from performing the duties of a peace officer.
- (9) In the six months following a use of deadly physical force incident that results in a death, the Agency shall offer each Involved Officer a minimum of two opportunities for mental health counseling. The officer shall be required to attend at least one session of mental health counseling.
- (a) At agency expense, the involved officer (s) shall be scheduled for an appointment with a licensed mental health counselor for a counseling session with a follow-up session scheduled at a date determined by the mental health professional.
 - (b) The counseling sessions are not to be considered fitness for duty evaluations, and are to be considered privileged between the officer and counselor.

- (10) Prior to a final determination being made by the District Attorney, the District Attorney and the primary investigative agency shall consult with each other and make a public release of information as is deemed appropriate.

Section 6: Primary Investigative Agency

After consulting with the District Attorney, the Agency shall decide what law enforcement agency will be the primary investigating agency. In the event that the involved officer's own agency will be the primary investigating agency, and the incident resulted in a death, the Agency will promptly make arrangements for at least one investigator from outside the Agency to participate in the investigation.

- (a) In the event that a use of deadly physical force resulting in death or serious physical injury involves officers from multiple jurisdictions, the District Attorney and each involved agency shall consult and agree upon a primary investigative agency.

Section 7: Investigation Protocols

- (1) The investigation, at a minimum, shall consist of:
 - (a) Eyewitness interviews.
 - (b) Evidence collection.
 - (c) Scene documentation.
 - (d) Background interviews.
 - (e) Involved Officer interview(s)
 - (f) The name, gender, race, ethnicity and age of the decedent.
 - (g) The date, time and location of the incident.
 - (h) A brief description of the circumstances surrounding the incident.
- (2) The investigation shall be documented in written reports.
 - (a) All written reports and taped statements shall be filed with the investigator's agency, and copies provided to the lead investigative agency, and the Involved Officer's agency.

- (b) All police reports shall be provided to the District Attorney.

Section 8: District Attorney

- (1) When an incident of the use of deadly physical force by an officer occurs, and death or serious physical injury results, the agency shall, as soon as practicable notify the District Attorney's Office.
 - (a) Notification shall be made to the District Attorney, Chief Deputy, or other senior member of the District Attorney's staff.
- (2) When a use of deadly physical force by an officer occurs, and death or serious physical injury results, the District Attorney, and/or a senior member of his staff will consult with the agency regarding the investigation and implementation of the other elements of this plan.
- (3) The District Attorney has the sole statutory and constitutional duty to make the decision on whether to present a matter to a Grand Jury.
 - (a) Preliminary Hearings will not be used as a method of reviewing an officer's use of deadly force.
 - (b) The District Attorney will consult with the investigating agency and make the decision on whether to present the case to a Grand Jury.
 - (1) The timing of the decision will be made by the District Attorney at such time as he has determined that sufficient information is available to competently make the decision.
 - (c) If the District Attorney decides to present a case to the Grand Jury, the District Attorney shall promptly notify the investigating agency, the involved officer's agency, and the involved officer's representative.
 - (d) If the District Attorney decides that the investigation reveals that the officers use of deadly force was justified under Oregon law, and that Grand Jury review is unnecessary, the District Attorney shall so notify the Agency, the involved officer, the involved officer's representative, and the public.
- (4) If the use of deadly physical force results in physical injury to someone other than a police officer, upon completion of the investigation, all investigative information shall be forwarded to the District Attorney for review.

Section 9: Debriefing and Reporting

The use of deadly physical force by an officer has the potential to create strong emotional reactions which have the potential to interfere with an officer's ability to function. These reactions may be manifested immediately, or over time. Further, these reactions may occur not only in an officer directly involved in the incident, but also in other officers within the Agency.

The requirements of this section provide a minimum framework, and are not intended to take the place of Agency policy. Agencies are encouraged to develop formal procedures to deal with an officer's stress response following a use of deadly force incident. Such polices should include a procedure that are implemented from time of the incident and continue over time.

- (1) Upon a final determination by the District Attorney, the Agency shall conduct an internal review of the matter for compliance with agency policy. Such review, at a minimum shall include a review of the incident with the involved officer.
- (2) Each agency shall provide for a process for any officer who makes a request, to participate in a critical incident debriefing.
- (3) If available, agencies should encourage officers to take advantage of Employee Assistance Programs, and if appropriate, agencies should request assistance from other agencies that may have in place formal programs for dealing with critical incidents.

Section 10: Reporting, Training, Outreach

- (1) Each law enforcement agency within Polk County, shall include in its policy regarding the use of deadly force, a provision regarding engaging members of the community in a discussion regarding the Agency's policies on the use of deadly force, as well as discussions regarding the use of deadly force by the Agency's personnel.
- (2) Each law enforcement agency within Polk County shall provide a copy of this Plan to every officer, incorporate the plan into agency policy documents and provide training to peace officers and attorneys employed by the Polk County District Attorneys Office on the implementation of the plan, including use of deadly physical force training.
- (3) Upon the conclusion of the investigation, the announcement by the District Attorney pursuant to Section 8(3) of this Plan, and the debriefing, the Agency

shall complete the Attorney General report regarding the use of force, and submit the report to the Attorney General.

- (4) The Board and Department of Public Safety Standards and Training requires 8 hours per year, 24 hours over a three-year period of training from either the “firearms” or “use of force” subject areas. Each agency subject to this Plan shall require that a minimum of four (4) hours per year, twelve (12) hours over a three-year period, of that training be on the use of force. The training must include education on the agency’s use of force policy. This training may also include, but is not limited to:
 - (a) Defensive Tactics;
 - (b) Tactical Shooting;
 - (c) SWAT Training;
 - (d) Use of force in making an arrest;
 - (e) Use of non-lethal force.

Each agency shall have a written policy and monitoring system to ensure that the standards are met.

- (5) Prior to the adoption of this Plan, the Planning Authority shall take steps to engage the Polk County community in a discussion regarding the purpose of the Plan, and the elements contained therein. Such steps shall include, but are not limited to general release of the draft, discussion with the media, providing the draft to agency employees, union representatives, elected officials, and members of relevant boards or commissions.
- (6) After adoption of this Plan, to the extent they are fiscally able, each agency shall take steps to publicize the Plan to their respective communities, by providing information to the media, general public, community organizations, and quasi-governmental bodies.
- (7) At least once per calendar year, the Agencies subject to this Plan shall collectively conduct a seminar intended to educate the media and selected members of the Polk County community in the use of force by law enforcement officers, and the investigation of such incidents.

Section 11: Fiscal Impact

- (1) At the conclusion of each fiscal year following the adoption of the Plan, each agency shall submit to the administrator of the Plan, a report outlining the fiscal impact of each element of the Plan as described in sections (a) to (e) of Section 2 (4) of Senate Bill 111, Oregon Laws 2006.

Section 12: Plan Revision

- (1) Beginning January 1, 2009, and each year thereafter, the Planning Authority shall meet at least once to review and discuss the operation of the Plan.
- (2) If a revision of the Plan becomes advisable, the Planning Authority shall meet and discuss such a revision. If the Planning Authority adopts a revision, such revision shall be submitted for approval as provided by statute.

Section 13: Agency Policies

Each law enforcement agency in Polk County shall provide a copy of the individual agency policy on dealing with use of deadly force and said policy is attached to this plan.